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IN THE

Supreme Court of the United States

October Term, 1958

No. 765

CHARLES J. GREGORY, *et al.*,

Petitioners,

—v.—

THE COLUMBIA GAS SYSTEM, INC., *et al.*,

Respondents.

No. 766

PAUL E. KERN,

Petitioner,

—v.—

THE COLUMBIA GAS SYSTEM, INC., *et al.*,

Respondents.

No. 774

ELMO E. ALLEN, *et al.*,

Petitioners,

—v.—

THE COLUMBIA GAS SYSTEM, INC., *et al.*,

Respondents.

RESPONSE IN OPPOSITION TO PETITIONS FOR CERTIORARI

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March 17th, 1959

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Definitions

AMERICAN	American Fuel & Power Company
AMERICAN NOTEHOLDERS	Holders of American publicly held 7% secured debtor notes.
AMERICAN TRUSTEE	William M. Hamilton, Trustee of American Fuel & Power Company.
CHAPTER X	Chapter X of the Bankruptcy Act, 11 U.S.C. §§501 et seq.
COLUMBIA	The Columbia Gas System, Inc., heretofore known as Columbia Gas & Electric Corporation.
DISTRICT COURT	U. S. District Court for the Eastern District of Kentucky.
INLAND	Inland Gas Corporation
INLAND TRUSTEE	Ben A. Williamson, Jr., Trustee of Inland Gas Corporation.
KENTUCKY	Kentucky Fuel & Gas Corporation, debtor.
KENTUCKY BONDS	The Kentucky first mortgage bonds held by the public (other than Columbia).
KENTUCKY CREDITORS	Creditors* of Kentucky (other than Columbia).
KENTUCKY DEBENTURES	The Kentucky Debentures held by the public (other than Columbia).
PLAN OF REORGANIZATION OR PLAN	The Plan dated February 25, 1958, as amended, confirmed by the orders of the Court below.
POST-BANKRUPTCY INTEREST	Interest accruing after appointment of Equity Receiver on December 2, 1930.
S. E. C.	United States Securities & Exchange Commission.
THE COURTS BELOW	The District Court and the U. S. Court of Appeals for the Sixth Circuit.

*These creditors include the holders of Kentucky's first mortgage bonds as well as Kentucky's debenture bonds.

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Preliminary Counter-Statement

The petitions seek review of issues which by a previous determination and opinion of the Court below were adjudicated adversely to the petitioners in an earlier series of appeals after full briefing and argument which included support by the Securities and Exchange Commission (*In Re: Inland Gas Corporation*, 241 Fed. 2d, 374; cert. denied,

355 U. S. 838—October 14th, 1957; 355 U. S. 879—November 18, 1957, rehearing denied).

Upon the claim and theory that the denial of certiorari by this Court was based upon the non-final nature of the order and decree there appealed from, petitioners now seek review of the latest decree and mandate of the Court below, (6th Cir., *In Re Inland Gas Corporation, et al., debtors,* January 15, 1959—262 Fed. 2d, 510), which in a per curiam opinion joined in by Chief Judge Simons, (he had dissented in the prior appeals on one issue in *Inland Gas Corporation,* 241 Fed. 2d 374 denying Kentucky's public creditors post-bankruptcy interest) dismissed the appeals taken by petitioners and directed affirmance of the judgment of the District Court confirming the plan now here. This court has granted certiorari in bankruptcy cases where the order entered was interlocutory—in fact in these very proceedings. (See, *Vanston* v. *Green,* 329 U. S. 156 [1946].)

The Plan now here was approved and confirmed in accordance with the mandate from the Appellate Court in *Inland Gas Corporation,* 241 Fed. 2d 374—cert denied and rehearing denied 355 U. S. 838, 879.

These proceedings have been pending in the District Court as to Inland and Kentucky since December, 1930, through equity receiverships, 77B petitions and the present Chapter X Bankruptcy reorganization proceedings, (1949 Record Vol. 1, pp 1, 14, 29, 38, 116, 120, 126, 130); and as to American by equity receivership in a State Court since 1934 through 77B Bankruptcy reorganization in the Delaware District Court and thereafter since March, 1940 in the District Court. (*In Re: American* 32 Fed *Sup.* 107, D. Del.

1940). Since 1940, the proceedings as to all of these debtors, have been conducted before the same District Judge in Eastern Kentucky where the affairs of Inland and Kentucky were under his judicial supervision since 1935.

This respondent opposes the petitions for certiorari filed by the Vanston Committee for Kentucky bonds; by the Kentucky debenture bondholders Committee and by one, Paul E. Kern, who, a member of the New York Bar from 1941, to in or about 1954 acquired 34% of the publicly held Kentucky bonds. (*In Re: Inland*, 241 Fed. 2d, 364, 374, 376.)*

The grounds upon which opposition to the granting of certiorari are based, justifying the denial or dismissal of the petitions are briefly as follows:

1. No important or substantial federal question is presented.

2. The issues have already twice been passed upon below in *In Re Inland*, 241 Fed. (2d) 374 and in *In Re Inland*, 262 Fed. (2d) 510. Furthermore this Court denied certiorari in respect of *Re Inland*, 241 Fed. (2d) *supra*, and also denied a petition for rehearing.**

3. There is no conflict between the Circuit Courts of Appeals since, in approving and confirming the Plan, the exercise of equity power was inherent.

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* Petitioners Vanston Committee and Kentucky Debenture Bondholders Committee supported the effort to compromise with Columbia, opposed by this respondent, and resulting in the beginning of proceedings in which finally Columbia's claims were subordinated. (See *In Re: American*, 122 Fed. 2d 223, 6th Cir. 1941; *Re: Columbia v. United States*, 6th Cir. 151 Fed. 2d 461, Cert. denied, 329 U. S. 737.

** Certiorari denied 355 U. S. 838—October 14, 1957; rehearing denied 355 U. S. 879—November 18, 1957.

4. The Kentucky public creditors are receiving all to which they are entitled either by virtue of the subordination and the extent thereof decreed below, or by virtue of the Kentucky estate's ownership of 26% of Inland stock, whose value under the Plan amounts to approximately $2,200,000.00* and the plan provides Kentucky's public creditors with the sum of $2,466,316.50. (The Plan—Exhibit "F")

Although this respondent, through its present counsel, bore laboring oar on the Anti-Trust issues resulting in the subordination of the Columbia's claims against these debtors, we support the Plan which provides payment to Kentucky's public creditors of principal with defaulted interest to December 2, 1930, the date of the equity receivership and further provides for Columbia approximately $3,000,000.00 of the outstanding stock of the reorganized company. We do so because we believe twenty-eight years of judicial administration require the termination of these

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* Reorganization Valuation (Dec. 31, 1957, Exhibit "F"—the Plan) $10,538,800.00

For American's Subsidiaries (Exhibit "F" —The Plan)	$300,000.00
Reorganization Expenses (estimated—Exhibits "E", "F" and "G"—The Plan)	835,000.00
Direct claims against Inland (The Plan—Exhibit "A")	963,359.89
Balance for Inland Stock—73.6% as security for American's noteholders & 26.4% to the Kentucky Estate	8,355,440.11
Total	$10,538,800.00
Resulting in American's collateral of 73.6% being worth approximately	$6,149,280.00
and Kentucky estate's 26.4% of Inland Stock	2,205,720.00
	$8,355,000.00

proceedings and the closing of these cases by consummation of the plan unless demonstrated manifest unfairness or injustice exists. We do not believe, and therefore submit, that neither injustice nor unfairness is shown by the petitions. These petitions do not reflect the fact that the Courts below exercised discretionary power in approving and confirming the Plan, a condition precedent to which, of necessity, was that the Plan in the exercise of that discretion was equitable. Furthermore, Columbia's claims were never rejected and therefore exist in full vitality, subject only to such subordination as the District Judge sitting in equity, as he does, determines to be just and fair. We perceive no injustice or unfairness, manifest or otherwise, where, as here, the subordinated secured creditor in the person of Columbia has remained subordinated for over fifteen years while more than $10,000,000,00* of claims and other sums were distributed out of the assets of the estates of these debtors.

Despite twenty-eight years of judicial administration, for the first time in the history of these proceedings, the plan now before this Court is a confirmed plan awaiting consummation. The respondent believes and submits that the petitions should be dismissed since they present no important or substantial Federal question and upon facts, the history of these proceedings and the adjudications already had, we are properly urging finality by the consummation of the plan where, as here no manifest unfairness or injustice may be perceived. We submit that the American public noteholders are entitled to have their claims finally paid in full with interest out of the value of assets which are theirs, either directly, or by resort to the collateral. For that purpose, every plan of reorganization

* Transcript District Court May 9, 1958, pp. 143 and 144

which has been the subject of appeals since in or about October, 1949, having reflected provision of payment to them of their claims in full with such interest as value from time to time justify.*

Thereafter and until March 6th, 1956, petitioners from time to time sought decrees from the District Judge directing the trustee to borrow funds to liquidate the indebtedness including interest to American's public noteholders. (See, *Kern's plans*, May, 1955, July, 1955, and Kern's petition, March 6th, 1956.)

Counter-Statement of Facts

The Plan:

It deals with all property and claims of the debtors. Each of the debtors is insolvent** and the plan is based upon reorganization value for the properties of the debtors as of December 31st, 1957, of $10,538,000.00. (See the Plan, Exhibits "A"-"C", respectively). The Inland trustee is to acquire all assets of American, American subsidiaries, and Kentucky, except for cash and cash items, subject to current liabilities, in the ordinary course of business. The Inland

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* Since *In Re: Inland Gas Corporation*, 187 Fed. 2d 813, 6th Cir., dealing with the plan of October 1st, 1949, American's noteholders have been held entitled to look to the value of 72.6% of Inland stock securing their notes for payment of their claims including interest.

** Petitioners rely upon the adjudication of insolvency for the claim that the Inland stock to the extent of 72.6% thereof must be worthless. This claim was made as far back as 1948 and resolved against them in 187 Fed. 2d 813, 6th Cir., 1951, and was sustained in the later opinion below in 211 Fed. 2d 381, Cert. denied, 368 U. S. 840 (1954); 217 Fed. 2d, 6th Cir., 1954; and 241 Fed. 2d 374, 6th Cir., Cert. denied 355 U. S. 838 (1957).

trustee, after borrowing $4,000,000.00, or a lesser sum necessary to consummate the plan, will use the loan proceeds and all cash balances available to the trustees to pay in full in cash all claims, except those of Columbia, consisting of priority and direct claims against Inland; claims of the publicly held American notes with interest to the date of payment and claims of Kentucky bonds and debentures publicly held with interest to December 2nd, 1930, when the District Court took control and judicial supervision by the appointment of equity receivers. (Exhibit "D" to the Plan, Article 6 and 8 of the Plan.) All of the claims held by Columbia against the debtors are given recognition after the payment of all other claims, by Columbia receiving all of the common stock of a reorganized company subject to the sum borrowed up to but not exceeding $4,000,000.00; and the net worth of the reorganized company's stock, predicated upon valuation, amounts to approximately $3,060,000.00. Pending Columbia's obtaining an appropriate S. E. C. order under the Public Utility Holding Act of 1935, the stock of the reorganized company is to be held by an escrow agent appointed by the District Court.*

The respondent will deal with the only two issues that concern the American publicly held notes as reasons alleged by petitioners for the granting of the writ sought. The first issue dealt with by all three petitioners, though stated in different language, is the alleged importance, presumably as a Federal question, of the denial of post-bankruptcy interest to a non-subordinated unsecured claim as against

* Columbia being a registered holding company is required to obtain permission to acquire the common stock of the reorganized company. (See 15 U. S. C. A., Sec. 79—1952.)

a subordinated mortgage claim; and the second issue raised, not by petitioner, Kern, but by petitioners Gregory, *et ano* and Vanston that Kentucky's public creditors are entitled to equal treatment with American's noteholders and if post-bankruptcy interest is denied, Kentucky creditors, it should similarly be denied to American's noteholders.

Petitioners again attack for the third or fourth time (initially in the hearings below resulting in *In Re Inland Gas Corporation*, 187 Fed. (2d) 813; again in the hearings resulting in *In Re Inland Gas Corporation* 211 Fed. (2d) 381, cert. denied (1954) 348 U. S. 840, and in *In Re Inland Gas Corporation*, 241 Fed. (2d) 374, cert. denied (1957) 355 U. S. 838, rehearing denied 355 U. S. 879, that Inland having been found insolvent, the stock owned by American and pledged to secure American's notes to the extent of 73.6% is worthless. Being worthless its security is non-existent and hence American public noteholder's claims are of the same quality and rank as those of Kentucky's public creditors. Kentucky's creditors overlook completely the fact that American's noteholders have been held to be secured creditors of Inland taking the position that Columbia, with its secured direct claims against Inland, would otherwise have enjoyed. Petitioners furthermore are completely oblivious to their own position as a creditor of Inland if the stock were worthless. If Inland stock were worthless and it has been held otherwise in three previous attacks below, what relationship would the Kentucky estate have or what could its interest in Inland's assets be? Were Inland's stock worthless, Kentucky's estate would have no claim whatsoever against Inland. It is clear that the insolvency of Inland does not establish the worthlessness of the Inland stock securing American's notes. It is rather

that such stock was given value by Columbia's claims being subordinated.

We state at the outset that the Securities and Exchange Commission supports the right of the American noteholders to payment of the principal of their claim with interest to the date of payment.*

Petitioners must apparently be reminded that Kentucky's bonds and debentures never were factually legally or equitably in a *pari passu* position with American's noteholders. The public purchased the Kentucky bonds and debentures in June, 1928. Only after that purchase did Kentucky acquire 26% of Inland common stock for $392,919.80.**

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* S. E. C. Brief, October, 1958, filed below at pages 24, 28, where at pages 24 and 25 of that Brief:

> "C. Payment of interest on the claims of public creditors of Kentucky should not be increased at the expense of the public creditors of American Fuel.
>
> We disagree with the contention made on behalf of Kentucky's public creditors that if they are not entitled to post-bankruptcy interest, neither are the public creditors of American Fuel (Kern Br. pp. 24-30; Paul Br. pp. 19-24; Vanston Br. p. 21). We note initially that this Court has held that a plan which accorded interest in full to American's public creditors was fair, since such interest was provided by the plan that was held fair and equitable by this Court in In re Inland Gas Corp., 211 F. 2d 381 (1954).
>
> Unlike the claims of the public creditors of Kentucky, the American Fuel gold notes are secured, and this Court's latest decision recognizes that secured claims may fall within an exception to the rule against post-bankruptcy interest."

** Kentucky's creditors asserted a claim for this amount against Inland, claiming fraud (Trans. Sept. 8 to 10, 1948, pp. 469-71, 578-82), which claim was rejected in findings of October 1st, 1949, all of which findings were affirmed on five appeals—*In Re Inland*, 187 Fed. 2d 813, 6th Cir. (1951). These shares of stock were by mis-

American's notes were publicly marketed in July, 1929 more than one year after the sale of Kentucky bonds and debentures and at the time of the public sale of American's notes, 72.6% of Inland's stock became collateral to the American notes.

We regret the necessity of reminding petitioners again that the proceeds of the sale of American's notes were needed and used for advances, with the proceeds of the sale of additional American stock and loans, aggregating over $2,300,000.00 to aid Inland and Kentucky, both of which were in financial distress caused by operating losses and burdensome obligations (Third advisory report, S. E. C. pp. 3, 4 and 5).

Petitioners also seem to overlook the fact that the District Court and the Court below in affirming the orders approving the Plan and confirming the Plan acted as Chancery Courts by the necessary finding that the plan, the first and only one in twenty-eight years of Court supervision that has been confirmed, was not alone fair and feasible but as well was equitable under all of the facts known as found by the Courts below in the long and tortuous history of these proceedings. It cannot be said that the Courts below were unmindful of the equities in this situation, in light of the many opinions in the Courts below.

We believe it appropriate to point out that American advanced $400,000.00 to Inland; thereafter $383,631.62; assumed a burdensome contract which was the obligation of

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conception regarded as security for Kentucky's bonds until December 15th, 1955, when the District Court decreed that such stock was not security for Kentucky's bonds, but was merely an asset of the Kentucky estate.

Kentucky* and at present still has an unpaid claim against Kentucky which, with interest to December 31st, 1957, amounts to $170,142.89. (The Plan, Exhibit "B", under Liabilities Prior to Receivership.)

American notes were secured by 72.6% of Inland's stock under the terms of the original sale to the public of those notes (*In Re Inland Gas Corporation*, 187 Fed. 2d 813, at p. 817; *In Re Inland Gas Corporation*, 211 Fed. 2d 381, pp. 382, 383). The value of the American noteholders security, to wit —72.6% of Inland's stock is in excess of $6,000,000.00,. (Exhibits "A", "C", "E" and "F"—the Plan, after deducting from valuation reorganization expenses and direct Inland's debts with interest), Kentucky estate's 26% of Inland's stock has a value approximating the sum directed to be distributed to Kentucky's public creditors. (See Exhibits "A", "C", "E", and "F" —the Plan, after deducting from valuation reorganization expenses and direct Inland's debts with interest.)

We deem it unnecessary further to belabor the counter-statement of facts, except to add:

1. That American's public noteholders were accorded a secured creditor status in Inland by the subordination of Columbia's claims against Inland, whereas Kentucky's public bonds and debentures were denied secured status by the order of the District Court of December 15, 1955, from which no appeal was taken.

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*Carbreath Gas Corporation, wholly owned and financed by American, assumed the obligation of Kentucky which received, directly, repayment of $583,149.48 from American's funds and the balance was paid directly by Carbreath to United Carbon Company, for the properties in question—See Transcript, Deposition of Gray, August 3, 4, and 5, 1948 at pages 106 to 112, with blueprint Exhibit following.

2. That as late as October 1st, 1956, Kern filed a petition in the District Court requesting payment of American's notes, after the District Court from the Bench on March 9th, 1956, when denying post-bankruptcy interest to Kentucky's public creditors specifically stated that that ruling did not apply to American public creditors because they were secured creditors. (Trans. March 8th, 1956, page 131, which was called to the attention of the 6th Circuit in the 1957 appeals by the Briefs of the S. E. C. and Kern and the debenture committees' petitions for rehearing.)

3. The other issues including the petition of Allen *et al.* for American Stockholders as affecting Columbia's rights, we believe, should be argued by its counsel and therefore do not comment thereon.

POINT I

The petitions should be dismissed since they do not present a substantial or important federal question.

The Petitioners urged that because subordination was decreed on the basis of violation of the Anti-Trust laws by Columbia, questions of great importance in the administration of the bankruptcy laws are raised and the denial of post-bankruptcy interest to a non-subordinated unsecured claim is contrary to well-recognized rules of law. The Court below, in *In Re Inland Gas Corporation*, 241 Fed. 2d 374, by majority decision to be sure, affirmed the District Court in the rejection of the plan of reorganization then before it upon the ground, among others, that provision for Kentucky's public creditors of post-bankruptcy interest was improper. Both the District Court and the

Sixth Circuit in 241 Fed. 2d, *supra*, were quite aware that they were dealing with a subordination question. They had been dealing with that question in many opinions since 1945, when the Sixth Circuit in *Columbia Gas & Electric Company* v. *United States*, 151 Fed. 2d 461, dealt with the subordination issue. The opinion in 241 Fed. 2d 374 at page 382, states:

> "The Court in the present case is unanimous in its view that those rulings be adhered to. For the purposes of our present case we accordingly must consider Columbia's claim as an existing valid claim, but subordinated in rank to the payment of other creditors.
>
> Such subordination does not in any way change the rule that post-bankruptcy interest is not payable on an unsecured claim as long as other claims which have been allowed remain unsatisfied. Under the ruling in Sampsell v. Imperial Paper & Color Corp., 313 U. S. 215, 61 S. Ct. 904, 85 L. Ed. 1293 and Pepper v. Litton, 308 U. S. 295, 60 S. Ct. 238, 84 L. Ed. 281, the Court had authority to disallow the claim of Columbia. Having declined to do so, Columbia is entitled to stand upon its rights as a creditor, even though a subordinated one. When all other creditors are paid in the manner which the bankruptcy law recognizes as payment in full, the subordination has been carried out and the creditor is entitled, as a creditor, to its rights in the remaining assets. Jamison v. Federal Deposit Insurance Corp., 5 Cir., 149 F. 2d 199, 200. A denial of this right is in substance a rejection or disallowance of the claim, which this Court has heretofore declined to do."

The Court below then carefully distinguished the *Deep Rock* case (113 Fed. 2d 266, cert. denied, 1940—311 U. S. 699) and the *City of New York* v. *Saper* case in (336 U. S.

388—1949 at pages 382 and 383). The petitions to review the decision of the 6th Circuit in 241 Fed. 2d 374 were denied by this Court in 355 U. S. 838 (1957). The petitioners on hearings before the District Court in respect to the Plan now here urged, among others, that the denial of certiorari in respect of *In Re Inland Gas Corporation*, 241 Fed. 2d 374 was undoubtedly based upon the lack of finality of the order then before the Courts below. As we have previously pointed out, the lack of finality of an interlocutory decree in bankruptcy does not preclude nor does the Court preclude itself from granting certiorari. It did so in these very proceedings in *Vanston* v. *Green*, 329 U. S. 156 (1946), when there was presented the right of a public creditor to interest upon past due interest.

From orders of the District Court dated May 13th, 1958 and June 2nd, 1958, respectively, approving as fair, feasible and equitable, and confirming the plan, the appeals below were taken.* Motions to dismiss the appeals were made by the American trustee and joined in by this respondent and Columbia. After briefs were filed on these motions to dismiss by both appellants and appellees, and after the submission and filing of all briefs on the merits by all of the parties to these appeals, the Court below heard full argument and had an opportunity to read all of the briefs in support and opposition, not alone to the dismissal of the appeals, but as well to consider the briefs on the merits, for, as the *per curiam* opinion indicates:

> "This Appellate Court has heard all arguments of four attorneys in favor of the motions to dismiss and those of five attorneys opposing the dismissals."

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* This included the opposition of the Securities and Exchange Commission.

The Appellate Court considered some twenty briefs filed by the attorneys for and against the motions—which briefs included the briefs on the merits (262 Fed. 2d 510, 511).

Despite the fact that Judge Simons had disagreed with the majority in 241 Fed. 2d 374, he now joined his brothers in the *per curiam* opinion of which review is here sought; and after making reference to the full history of this long drawn-out litigation as disclosed by the numerous opinions of that Court,* the Court below, now unanimous, has this to say:

> "Upon the last remand to the United States District Court, District Judge Ford had a full hearing with all interested parties appearing by counsel to consider whether a proposed plan, presented by the trustees of the several debtor corporations involved, is fair, equitable and feasible. Upon conclusion of the hearing, the district court entered an order finding the plan fair, equitable and feasible.
>
> "On June 2, 1958, the United States District Court entered an order confirming the plan of reorganization and overruling all objections to the plan and to

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* *In re American Fuel & Power Company*, 122 F. (2d) 223 (C. A. 6); *Columbia Gas & Electric Corporation v. United States*, 154 F. (2d) 461 (C. A. 6); *In re American Fuel & Power Company, et al.*, 151 F. (2d) 470, affirmed by the Supreme Court, *sub nom Vanston Committee v. Green*, 329 U. S. 156; *Columbia Gas & Electric Corporation v. United States, et al.*, 153 F. (2d) 401 (C. A. 6); *In re Inland Gas Corporation, et al.*, 187 F. (2d) 813 (C. A. 6); *In re Inland Gas Corporation, et al.*, 208 F. (2d) 13 (C. A. 6); *In re Inland Gas Corporation; Harbison v. Williamson, et al.; Vanston v. Williamson, et al.; Kern v. Williamson, et al.; Green, et al. v. Vanston, et al.*, 211 F. (2d) 381 (C. A. 6), certiorari denied, *sub nom Kern v. Vanston*, 348 U. S. 840; *In re Inland Gas Corporation, et al.*, 217 F. (2d) 207 (C. A. 6); *In re Inland Gas Corporation, et al.*, 241 F. (2d) 274 (C. A. 6), certiorari denied 355 U. S. 838 (1957).

its confirmation. It is obvious that the district judge attempted to the best of his ability and understanding—and we think successfully—to apply the principles stated in our last opinion (241 F. (2d) 374) and to put into full effect the mandate of this court. The evaluation which he put on the properties in issue was supported by substantial evidence and it cannot be said that his decision to follow the evaluation which he adopted upon expert testimony, rather than that of the Securities and Exchange Commission, was clearly erroneous. On the contrary, we find that the district judge exercised sound discretion in adopting the evaluation which he did, upon the basis of the expert evidence before him.

"We are of opinion, further that Judge Ford appropriately applied the adjudication of this court in 241 F. (2d) 374, with respect to post-bankruptcy interest and all other issues before him. Motions to dismiss are appropriate in the circumstances. Long Beach Dock & Terminal Co. v. Pacific Dock & Terminal Co., 98 F. (2d) 833, 835 (C. A. 9), certiorari denied 305 U. S. 1020; Securities and Exchange Commission v. Vacuum Can Co., 157 F. (2d) 530, 532 (C. A. 7), certiorari denied 330 U. S. 820.

"The appeals are dismissed; and the judgment of the district court confirming the plan of reorganization is affirmed."

POINT II

American public noteholders are secured creditors of Inland and having the right to look to the value of American's Assets and their security, are entitled to payment in full of their claims, with interest.

Contention is made by the petitioner, (in No. 765) Gregory *et al*, the Kentucky Debenture Bondholders Committee and obliquely by petitioner, Kern, in No. 766), that Inland being insolvent, its stock is worthless and hence the 72.6% of Inland stock as collateral to the American publicly held notes is worthless. Contention is further made that the claims of Kentucky's creditors and American noteholders are legally indistinguishable.

While the Kern petition at pages 21 to 23, does not go as far as that of the other petitioners in Nos. 765 & 766 (pp. 16 to 19), it attempts to use the argument as leverage to point up the importance and substance of the so-called Federal question. The reasoning is as specious as it is unsound. It was so found by the Court below in its latest opinion dismissing the appeals on the merits. (*In Re Inland Gas Corporation*, 262 Fed. 2d 510-11.)

Since the opinions below announced in *In Re: Inland Gas Corporation*, 187 Fed. 2d 813 (6th Cir. 1951) thereafter in the same title in 208 Fed. 2d 13 (1953), 211 Fed. 2d 381, cert. denied, 348 U. S. 840 (1954); 217 Fed. 2d 207 (1954), 241 Fed. 2d 374, cert. denied 355 U. S. 838 (1957) rehearing denied 355 U. S. 879 November 18, 1957) every plan has provided for the recognition of the secured nature of American Public noteholders claim against Inland assets to be measured by the value of 72.6% of Inland stock pledged to those notes. Effort throughout the long history

of these proceedings by Kentucky's creditors to invade the value of American noteholders' property has been denied them and yet do they persist in the same effort despite the many decisions over that long history.

The Gregory, *et al.* Kentucky Debenture Bondholders petition (No. 765) at Page 17, argues, as it did below, that, even if American noteholders' assertions as to the validity to the pledge of Inland stock are true, they cannot be considered as secured creditors of Inland by virtue of the definition of a secured creditor under Section 1 (28) of the Bankruptcy Act 11 U. S. C. Section 1 (28) limiting the definition to "a creditor who has security for his debt upon the property of the bankrupt." This too, is artless, for the petitioners completely ignore the fact as found, and the legal conclusion based thereon, that by virtue of the subordination of Columbia's claim, American's public noteholders moved into the position as a secured creditor of Inland measured by that Inland stock in the place of and the position which Columbia's claims might have enjoyed but for such subordination. The Kentucky estate may have a right to look to 26% of Inland stock to the extent of its value but no more, and no invasion of the property right serving as collateral to American's notes to the extent of 72.6% of Inland stock may be permitted to afford Kentucky creditors a bigger piece of the Inland pie.

Kern, in his petition (No. 766) at page 23 naively states that, when the case was before this Court previously under petition for writ denied (Inland Gas Corporation 355 U. S. 838 (1957), the Kentucky public creditors, "admitted" that the lower courts had merely remanded the case and their judgments were thus non-final. The Kentucky public creditors didn't "admit" but rather insisted that, un-

doubtedly the denial by this Court in 355 U. S., *supra* was, because of the non-final nature of the judgment then before it.

The petitioners urged that they had the right, under any plan or reorganization proposed which provided enough cash for the purpose, to have American public notes paid in full with interest and this took place as late as March 14th, 1956 and October 1st, 1956. (See Kern petitions bearing those dates.)

CONCLUSION

We submit and urge that upon the facts and the opinions below, through the long, tortious history of these cases no substantial or important Federal question is presented and that the petitions for certiorari should be promptly denied or dismissed as this Court deems appropriate. We believe that what this Court had to say in *Rice v. Sioux City Memorial Park Cemetery, Inc., et al.*, 349 U. S. 70 at page 74, is both apt and applicable to require the denial or dismissal most promptly of the petitions now here:

> "A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. (Magnum Import Co. v. Coty, 262 U. S. 159, 163; see also Address of Mr. Chief Justice Vinson, before the American Bar Association, Sept. 7, 1949, 69 Sup. Ct. v, vi; Address of Mr. Chief Justice Hughes, before the American Law Institute, May 10, 1934, XI Proc. Am. Law Inst. 313.) 'Special and important rea-

sons' imply a reach to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion. Cf. the classic rules for such avoidance stated by Mr. Justice Brandeis in Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 341."

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March 17th, 1959

Respectfully submitted,

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